THE HON'BLE MR JUSTICE B.SESHASAYANA REDDY

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WRIT PETITION NO : 21786 of 2005

02-02-2006

Between:

M/S. Bhaskara Enterprises, Engineering Contractors and Suppilers, Rep.by its Managing Partner, Polavarapu Srinivasa Prasad, S/o. Bhaskara Rao, D.No.17-127/19, East Kalyanpuri, Uppal, Hyderabad.

..... PETITIONER

AND

1 The Chief Administrative Officer, Construction, South Central Railway,

Secunderabad and another.

....RESPONDENTS

THE HON'BLE MR JUSTICE B.SESHASAYANA REDDY

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WRIT PETITION NO : 21786 of 2005

O R D E R:

This writ petition has been filed by M/S. Bhaskara Enterprises, Engineering Contractors and Suppliers, rep. by its Managing Partner- Polavarapu Srinivasa Prasad, assailing the action of the respondents in deducting the seigniorage charges on ordinary earth from the bills payable to it.

Heard the learned counsel for the petitioner and the learned Standing Counsel appearing for the respondents.

Learned counsel appearing for the petitioner submits that the issue involved in this writ petition has been squarely covered by various decisions of this Court and it is no more *res integra.*

Learned Standing Counsel appearing for the respondents submits that the writ petition is liable to be dismissed on three grounds, viz., firstly, the agreement contained a clause with regard to deduction of seigniorage charges; secondly, in case of disputes, they are required to be referred to the arbitrator; and thirdly, for non-joinder of necessary party i.e, the State Government, to the proceedings.

With regard to the first submission made by the learned Standing Counsel appearing for the respondents, it is relevant to refer the letter dated 17-09-2004 of the Department, which reads as follows:

> "Now, in view of G.O.No.331, dated 21-5-2000 and G.O.No.466 dated 24-8-2000 issued by Government of Andhra Pradesh, wherein the rates of seigniorage charges applicable Mines and Minerals including stone ballast, earth, moorom etc., have been prescribed and in view of policy decision issued by CGE vide letter No. W/44/B/IV, dated 25.6.2004, it has been decided to that in the future tenders, the following specific clause will be added as sub-para of the main para "Taxes" in the tender conditions where items of earth work blanketing are involved in the schedule:-
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> "Seigniorage charges on supply of earth, moorom, sand and other minerals as fixed by the Stage Government and payable to them is revised from time to time during the currency of contract will be recovered by railways from the contractor's on account and final bills and remitted to the State Government. The rate quoted by the tenderer shall be inclusive of these charges. Claims regarding revision of seigniorage charges and consequently enhancement of the accepted rate will not be entertained.
>
> The above instructions should be followed immediate effect".

The Department also clarified in its letter dated 15-12-2004 that in case of agreements where no specific clause is provided for

recovery of seigniorage charges on earth by Railways from the contractor's on account bills, the same is not required to be recovered from the contractor's bill. But all the details may be given to the State Government on demand, so that, if required, State Government can recover the seigniorage charges directly from the contractors.

It is apparent from the above referred letter that unless a specific clause is included in the contract with regard to the collection of seigniorage charges on earth, no such deductions are required to be made.

In view of the above letters, I do not see any substance in the first submission made by the learned Standing Counsel appearing for the respondents. With regard to the second submission; i.e., remedies in case of disputes between the contractor and the department, there is no question of dispute since the department itself issued instructions not to recover the amounts from the bills payable to the contractor for supply of ballast, earth, moorom and other minerals. There is no specific clause with regard to the collection of the seigniorage charges on earth in the agreements executed by the petitioners. With regard to the third submission; admittedly as the dispute is between the contractor and the Department and therefore, the State Government is not a necessary party.

More precisely the same issue whether the respondents are entitled to recover the seigniorage charges on earth in the absence of any specific clause in the agreement fell for consideration in W.P.No.21401 of 2004 and batch. The said writ petitions came to be disposed of on 23-03-2005 with an observation that the respondents are not authorized to deduct the seigniorage charges on ordinary earth in the absence of any specific clause to that effect in the agreement. I deem it appropriate to refer the relevant portion of the order and it is thus:

> "In the cases on hand, as already expressed above, the only

> clause available with regard to payment of seigniorage charges is clause 18.2. however, the said clause is general in nature and does not specifically provide for payment of seigniorage charges on “ordinary earth”. Therefore, in the light of the decision taken by the respondents under the letter dated 15-12-2004, I am of the view that the seigniorage charges on “ordinary earth” in respect of the works entrusted to the petitioners under the respective agreements cannot be recovered. Accordingly, the writ petitions are disposed of directing the respondents not to withhold any seigniorage charges on ordinary earth from the on account and final bills of the petitioners in respect of the works entrusted to them under the agreements in question. However, if the amounts are already deducted, it is for the petitioners to work out the appropriate remedy for refund of the same. It is also made clear that this shall not preclude the State Government to recover the seigniorage charges directly from the petitioners, in case any such decision is taken, following due process of law”.

The relevant clause in the agreement came to be executed between the petitioner and the respondents with regard to the collection of seigniorage charges reads as follows:

> “12.3. Seigniorage charges payable to Government as fixed by Government of A.P., and as revised from time to time during the currency of contract will be recovered by Railway from the Contractor’s on account and final bills and remitted to Government of A.P. Claims regarding revision of Seigniorage charges and consequently enhancement of the accepted rate will not be entertained.”

It is apparent from the above clause that the seigniorage charge on ordinary earth is not contemplated. Therefore, the respondents are not authorized to deduct the seigniorage charges on ordinary earth from the bills payable to the petitioners.

Accordingly, the writ petition is disposed of directing the respondents not to withhold any seigniorage charges on ordinary earth from the final bills of the petitioner in respect of the works entrusted to it under the agreement in question. However, if the amounts are already deducted, it is for the petitioner to work out the appropriate remedy for refund of the same. It is also made

clear that this shall not preclude the State Government to recover the seigniorage charges directly from the petitioner, in case any such decision is taken, following due process of law. No order as to costs.

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02-02-2006

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